

10411-1-23

Crow's Nest Pass Freight Rates

AN ADDRESS

BEFORE THE NATIONAL CLUB
AT WINNIPEG, MAN.

on

JANUARY 9th, 1925

By

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FREIGHT RATES

The question of freight rates is, and has always been bound up in the political and commercial development of this country. Intercommunication and exchange of commodities are the essence of civilization, and in a country geographically constituted as Canada, is the basis of our existence as a united whole. I shall not waste time arguing whether the West has made the C.P.R. or whether the C.P.R. has made the West, because I shall be as far advanced in the solution of the problem as the riddle of the hen and the egg. What I do know is that at this stage the C.P.R. is essential to the West and the West is essential to the C.P.R.

In dealing today with the problem of transportation and freight rates, one must remember that we have not yet recovered from the effects of the war, and cannot therefore treat the matter as if conditions were absolutely normal.

If it be remembered that after the South African War it took about five years before ocean freight rates were regarded as having reached normal, and we compare the disruption in conditions due to the Great War with that which resulted from the South African War, it would be realized that the present is hardly sufficient time in which to return to normal. It is an undeniable fact that Canada is served by as good and as efficiently administered a system of railways as is to be found anywhere, and that the Government control is as effective and as beneficial to the public at large as is to be found anywhere.

The railway organizations as common carriers are under definite common law obligations to the public and

are entitled to complementary benefits. They are obliged to transport goods and passengers such as they hold themselves out as in the market to transport, and on the other hand are entitled to a fair and reasonable return for the service rendered,—but nothing more than a fair and reasonable return.

There is a general feeling throughout the country at large, and this feeling has existed for about three years now, that freight rates are too high, and so far as Manitoba and the other Prairie Provinces are concerned, that feeling is growing into a bitter resentment. The chief cause of that resentment is an agreement made between the Government of Canada and the Canadian Pacific Railway in 1897, known as the Crow's Nest Pass Agreement. The charge is made against the Railway Company that it has got the consideration for the contract and is not carrying out its part of the contract. The suggestion has been made that the C.P.R. has broken the law. It is somewhat puzzling to always follow what the critics mean, because they speak of a contract and breach of a contract; and obtaining consideration and being guilty of non-performance, etc., all law terms, and legal conceptions,—and yet they say it is not a legal question. I say it is a legal question, in that it is a matter to be dealt with by the delegated body to which the necessary power has been given by the Parliament of Canada, and ultimately by the Privy Council, as prescribed by the laws passed by Parliament when it changed the law governing the Crow's Nest Pass Agreement.

First let us make it clear that under our constitution the Parliament of Canada has the right to legislate in any way it sees fit in matters relating to railways such as the C.P.R., and in this respect its power is absolute and unrestricted—then we shall be in a position to realize exactly what Parliament has done or failed to do in this matter of the Crow's Nest Pass Agreement. The Railway Commission, by the Act of 1903, was given power to fix rates, and by the same Act was given power to prevent discrimination. It must be obvious to all that these two powers run concurrently,—that is, that if its power to prevent discrimination can be invoked, it must also have the power to fix the rates which would have the effect of creating or preventing a discrimination. The argument has been advanced that the Crow's Nest Pass Agreement removes the question of the rates covered by that agreement entirely from the jurisdiction of the Board, and yet they argue that discrimination created by the rates fixed by the agreement should be prevented by the Board. It seems to me that if they wish to deprive the Board entirely of its jurisdiction over the Crow's Nest Pass Rates, they should be consistent, and not expect the Board to remedy a condition created by those rates.

We are likely to suffer by assuming the position which has been so definitely taken by some of the newspapers in the country. They argue that so far as the Railway Commission is concerned, the lines affected by the Crow's Nest Pass Agreement in relation to the commodities covered by the Agreement, do not exist,—that is, they are not within the jurisdiction or knowledge of the Railway Commission—and yet when the Crow's Nest Pass rates are brought into effect and affect those lines and those commodities on those lines, the Railway Commission is asked to take notice of the situation and to bring the same

rates into operation with respect to those commodities on other lines. The trouble is, the newspapers are acting as parties to an action, advocates in an action, witnesses in an action, and judge and jury in an action, and their repeated reasoning along this line is having some effect on the public mind both east and west of the Great Lakes. It is therefore our duty, on our part, to dispassionately analyze the situation and see exactly what the facts are.

At the time the Crow's Nest Pass Agreement was made the situation was that the C.P.R., by its charter, was entitled to exact such rates as would bring it a 15% rate of return on its investment. The Committee on Railways of the Privy Council had the right to approve of the tariffs issued by the Railway Company before they were effective, and if the Committee approved a tariff which was lower than the tariff which would bring 15% return to the Company, the tariff could not go into effect without the consent of the Company. This was to assure the Company's minimum return as fixed by its charter. This was by agreement later reduced to 10%. The Crow's Nest Pass Agreement provided, with respect to the rates and tolls between the points mentioned in the agreement, that these were to be first approved by the Governor-in-Council or "by a railway commission if and when such a commission is established by law," and also that the same "shall at all times thereafter and from time to time be subject to revision and control in the manner aforesaid." Then a subsequent section of the agreement fixes rates of reduction to be made in the tolls on the commodities therein mentioned, and goes on to say that "no higher rates than such reduced rates or tolls shall be hereafter charged by the Company upon any such merchandise carried by the Company between the points aforesaid."

In 1903 "The Railway Act" was passed, creating a new Railway Board. This was re-enacted in the revised statutes of 1906. No change was made in that portion of the Act which is important in this matter. This Act was amended and consolidated in 1919 and again amended in 1922.

What was the position in 1903 before the Railway Commission was created and given absolute power over the rates? The position was that the C.P.R. was entitled to a definite minimum return on its capital investment. The Government had the right to refuse the schedules of rates issued by the Company. If the Government, in refusing the rates, fixed rates below what would be sufficient to bring a profit of 10% to the Company, the Company could refuse to adopt such rates. The Company, by an agreement with the Government, known as the Crow's Nest Pass Agreement, was bound not to exceed the rates specified in that agreement in respect of the commodities therein mentioned over the lines therein specified, but with respect to commodities not specified in the agreement and on lines not specified in the agreement the Company was free to charge such a rate as would give it 10% on its investment, taking into account the Crow's Nest Pass rates. "The Railway Act" came into force and changed all this. Who passed "The Railway Act"? The Dominion Government,—one of the parties to the Crow's Nest Pass Agreement. What effect did the change have? It removed the safeguard which the Company had insofar as its consent to the rate which would produce less than 10% was concerned, although it was not free to charge anything like less than the maximum rates under the Crow's Nest Pass Agreement, neither was it free to charge whatever was necessary on the lines and on the commodities not mentioned in the Crow's Nest Pass Agreement, to

enable it to earn its 10%. The whole question of freight rates was left to the Board created by the Government to carry out the work of the Government,—that is, one party to the agreement destroyed all the rights, powers and safeguards of the other party. Is it fair, therefore, to say now that the other party to the agreement should give to the first party all the benefits accruing to the Government under that agreement? True enough, the Government paid a subsidy to the Company under the Crow's Nest Pass Agreement, but the Government took the matter into its own hands with full knowledge of this fact when it swept away all the circumstances and all the limitations existing when and under which and subject to which it made the Crow's Nest Pass Agreement, and immediately after "The Railway Act" came into effect in 1903, an order of the Board was passed reducing the then prevailing rates below the maximum fixed by the Crow's Nest Pass rates, and these reductions were maintained and in existence long afterwards,—until as late as 1917. In 1917, owing to the war conditions, an application was made by the railway companies to the Board for an increase in freight rates, to meet the increased costs in operation, and following the increase made by the Interstate Commerce Commission of the United States of America, and this increase was granted. Following this increase there was an increase made in the wages of railway employees in the States, and as the unions working on those railways operated both in the States and in Canada, this increase had its reflection in Canada. There was a further increase in 1918, an Order-in-Council being passed imposing upon the railway companies a general increase in wages, which was made retroactive for over a period of nearly eighteen months. This necessarily resulted in the railways finding it difficult to pay their way with-

out an increase in rates. They therefore approached the Railway Commission for such an increase, and a further increase was granted by order of the Commission. After these increases there was considerable agitation to ask for the enforcement of the Crow's Nest Pass Agreement.

In 1919 the amendment to "The Railway Act" above mentioned was passed, which read as follows:—

"Notwithstanding the provisions of Section 3, the powers given to the Board under the Act to fix, determine and enforce just and reasonable rates and to change and alter rates as changing conditions or cost of transportation may from time to time require shall not be limited or in any manner affected by the provisions of any Act of Parliament of Canada, whether general in application or special, and relating only to any specific railway or railways, and the Board shall not excuse any charge of unjust discrimination, whether practised against shippers, consignees or localities, or of undue or unreasonable preference, on the ground that such discrimination or preference is justified or required by any agreement made or entered into by the Company, provided that this sub-section shall remain in force only during the period of three years from and after the date of the passing of this Act."

Obviously this amendment was passed because of certain public agitation in the House to have the Crow's Nest rates enforced, and the obvious reply to this by the C.P.R., was that if the Crow's Nest rates were to be reintroduced they must be reintroduced in a strictly limited way which would have the effect of justifying discrimination in favor of the localities getting the benefit of the rates. It is to be noticed, however, that no definite reference to the Crow's Nest Pass Agreement is made, nor is any definite reference made to

the Charter of the C.P.R. The section declares definitely, however, that section 3 of the Railway Act gives power to the Board to "fix, determine and enforce just and reasonable rates and to change and alter rates as changing conditions or cost of transportation may from time to time require," and if this section is to be read to mean that the Crow's Nest Pass Agreement may have the effect of limiting the power of the Board, it also must be taken to mean that the special act giving the C.P.R. its charter should have the effect of limiting the power of the Board to the extent of guaranteeing the Company 10% return on its capital investment. The advocates of the sanctity of the Crow's Nest Pass Agreement have never gone to the length of saying that that amendment should have that effect, and that the Company is therefore entitled to still insist upon the 10% return from its transportation revenue. The advocates of the sanctity of the Crow's Nest Pass rates say that it is a special act, and for that reason it will be necessary to look at the interpretation of the words "special act" as contained in "The Railway Act" to which the legislation in 1919 was an amendment and of which it then formed a part.

In 1920, effective on the 1st of May, a substantial increase was made to all railway employees in the United States, known as the Chicago Wage Award. This award having been adopted and made applicable to Canadian railways greatly increased the operating costs, and in consequence thereof applications were made on behalf of most of the Canadian railways for a further general increase, which was granted,—but the order provided that commencing on the first of January, 1921, there should be reductions. By that decision all railways under the Board's jurisdiction were required to furnish the Board with monthly statements of their

operating revenue with a view to readjustment if desirable. The Governments of Manitoba and Saskatchewan in 1920 appealed to the Privy Council against the order of the Board for the increase. The appeal was to have the order of the Board suspended. The matter was referred back to the Railway Commission for further consideration, and judgment was delivered by the Railway Commission in November, 1920, which justified the increase owing to the financial condition of the railways and by virtue of the Board's duty under "The Railway Act" to "fix, determine and enforce just and reasonable rates." In dismissing the appeal to the Governor-in-Council, the Government, by Order-in-Council, recommended that the Board should conduct an enquiry at the earliest possible date with a view to establishing rates meeting to the utmost extent possible the requirements as to equalization. The Board held an exhaustive investigation into the subject, holding sittings throughout Canada, and made certain changes and ordered the Railways in June, 1922, to file tariffs giving effect to the rates so prescribed. The matter was then taken up on the floor of the House, and a special committee of the House was appointed to consider railway transportation costs. The committee held a long investigation during the months of May and June, 1922, at which representatives from all parties were heard, and presented not only evidence, but extensive arguments. The committee made its finding, and as a result thereof the Act was introduced to amend the Railway Act, which amendment was to the following effect:—

"Sub-section 5 of Section 325 of "The Railway Act" of 1919 shall, notwithstanding the proviso thereto, remain in effect until the 6th of July, 1923, and may be continued in force for a further period of one year by order of the Governor-in-

Council published in the Canada Gazette."

Up to that point the legislation was just as general, vague, indefinite and uncertain as the amendment made in 1919, and in my opinion just as ineffective,—but it goes on to say that "notwithstanding anything herein or in said sub-section 5 contained, rates on grain and flour shall on and from the 6th day of July, 1922, be governed by the provisions of the agreement made pursuant to Chapter 5 of the Statutes of Canada, 1897." Chapter 5 of the Statutes of Canada, 1897, is the Act authorizing the Crow's Nest Pass Agreement, and this reference to the agreement made in pursuance of that statute is the very first definite reference to the Crow's Nest Pass Agreement. If Parliament had decided previously that the Crow's Nest Pass Agreement rates should be in effect after a definite period of time, it could easily have said so in plain language, the same as it did in 1922 when the rates on grain and flour were definitely fixed according to the rates in the agreement. The fact that Parliament had previously not done so in one instance,—that is, in 1919, and had done so in 1922, must be accounted for simply by the fact that in 1919 Parliament did not intend to suspend the Crow's Nest rates for three years and have them come into effect after three years, but that in 1922 it definitely intended the Crow's Nest rates on grain and flour to come into effect.

What effect have the reduced rates provided for in the Crow's Nest Pass Agreement had on other railways? They obviously have the effect of placing the C.N.R. in the position of being obliged to grant similar rates on their competing lines, and if the argument of some of the western provinces be correct it would also have the effect of reducing rates on those commodities all over the country to the Crow's Nest Pass Agree-

ment level. The railway companies say that they cannot operate under those conditions.

It is to be remembered that the C.N.R. is a public institution, owned by all the people of Canada, and unless it can pay its way, the losses incurred in its operations will have to be made up by taxation. It is therefore in the interests of the country at large that the C.N.R. should be enabled to charge such a rate as will enable it to pay its operating expenses at least. The result of the railway companies being forced into a position in which they would not be able to obtain a fair and reasonable rate would be that they would give defective service. This would be a deplorable condition, as the very existence of the country depends upon good and efficient railway service. At the time of this investigation being made, it was satisfactorily pointed out that the railway rates chargeable in the western provinces of Canada were lower per mile than those chargeable in corresponding territory in the United States of America. It has been argued that the rates chargeable in eastern Canada have been uniformly lower than those chargeable in western Canada, and that statement may possibly be true, but in viewing that aspect of the case sight must not be lost of the fact that that may be the natural result of density of population, as in all transportation problems it is axiomatic that density of population results in lower rates. The special committee of the House, in making its report, used the following language:— "Fixing rates by legislation is, no doubt, generally a bad principle, because it hampers the free action of the Board of Railway Commissioners, and may create a discrimination in favor of the commodities covered by statutory rates. The Crow's Nest Pass Agreement was enacted before the institution of the Board. This Board, created in 1903,

have been charged by the Parliament of Canada with the duty of regulating railway rates and of establishing just and reasonable railway rates. It is the only body in Canada equipped for the determination of the intricate matters relative to railway rate making. The matter of the Crow's Nest Agreement becoming effective or being suspended is related to other concrete railway rate issues either pending or imminent. The one reacts upon the other, and both upon the whole freight rate structure which must, within a short period of time, undergo many substantial changes. The question would seem to be largely one that can best be treated by one body, the Board of Railway Commissioners." The Committee, however, came to the conclusion that a general reduction in railway rates is essential to the economic life of the country, and in the same paragraph of the report used the following language:— "Further, your committee is of the opinion and wish to declare in the most emphatic manner that railway operating costs should be decreased, and towards the achievement of that end we recommend the closest co-operation between the management of the different Canadian railways and between the management of the railways and their employees."

After the 6th of July, 1923, the Governor-in-Council pursuant to the amendment to the Railway Act passed in 1922, continued the operation for another year of the amendment to the Railway Act passed in 1919.

At the time this whole matter was submitted to the committee of the House the different viewpoints of the different provinces were strongly urged upon the committee. The representatives of the Province of British Columbia argued for equalization of the mountain scale of rates with the prairie scale, and for placing of the Port of Vancouver in

a position of relative equality with the Head of the Lakes. British Columbia contended that equal consideration with the rest of Canada in the matter of railway rates was implied in the arrangement made with the Province of British Columbia at the time of confederation. British Columbia also pointed out that not only did it pay a part of the subsidy paid by the Dominion Government to the C.P.R. for the Crow's Nest Pass rates, because of the fact of its being a part of Canada, but it also gave the C.P.R. a land subsidy and cash subsidy for these rates, and that owing to the changed conditions, if the Crow's Nest rates were re-introduced British Columbia would be not only not getting the benefit from the rates, but the rates would be working a hardship against the Province for the reason that Vancouver has now become an important seaport, and the movement of a number of commodities for which lower rates were prescribed in the agreement is now from west to east instead of from east to west as at the time of the agreement, which provides for a lower rate on transportation from east to west. The main witness for British Columbia cited the case of binder twine, which is now being manufactured in Vancouver and which would be subjected to a higher rate moving out of Vancouver into the prairie provinces than would be paid on the same article manufactured in the United States and moving into the prairie provinces. He argued that if the Crow's Nest Pass Agreement is in existence and should be effective, that the time has arrived when the Government, in the interests of the whole of Canada, should change the agreement and establish a new set of rates. The Maritime Provinces also set out their special plea based upon the conditions under which the Intercolonial Railway was constructed as a result of the confederation agreement. This is what the committee

said about the respective arguments:—

"While your committee was impressed by the arguments put forward on behalf of the Maritime Provinces and British Columbia, they are possibly without the scope of the reference to us, and, in any event, are too intricate and involved, and would require more time than is at the disposal of your committee, to form a proper judgment regarding them. Moreover, these matters have been before the Board of Railway Commissioners during the past 12 months; the Board has heard voluminous evidence, much expert testimony and lengthy arguments; it has had at call men trained in railway rate matters, and the committee feel that it would be inadvisable and generally unsatisfactory to even appear to invade the jurisdiction of the board, or to anticipate its judgment."

The whole matter of freight rates again came up before the Board of Railway Commissioners in 1924, judgment in respect of which was delivered on the 14th of October, 1924. In a very lengthy and carefully reasoned judgment Commissioner Boyce sets forth the whole history of the question, and comes to the conclusion that if the contention of the western provinces were to be made effective, and if the Crow's Nest Pass Agreement rates were to be put into effect, and would have the effect of generally reducing the rates all over the railway systems to the level of the Crow's Nest rates, which being statutory rates would be fixed and immovable, the Railway Commission has no control over rates, and the powers of the Board so far as rate making is concerned would cease and the Board would consequently cease to function. As to this, Commissioner Boyce uses the following language:—"The result is that the Board's functions under the Railway Act in fixing from time to time, after exhaustive inquiry, fair, reasonable,

and adequate freight rates for all railways under its jurisdiction, are rendered futile and ineffective by the existence of an agreement, made in 1897, with one railway company, which, in its present effect, purports to fix and impose upon all railways affected, for all time, and notwithstanding changed and changing conditions, railway rates at a standard below and not in accordance with those standards of equality which this Board has found from time to time to be fair and reasonable." Then, when referring to the Crow's Nest rates, he says:—"The disruption of the freight rates structure resulting from the tariffs in question has created a condition of chaos and rate disparities without any parallel in the history of freight rate making in Canada." He agrees that in fixing fair and reasonable rates it is well to look at any rates which might be established by agreements such as the Crow's Nest Agreement, but contends that it would be unfair to the country at large if the Railway Commission were required to entirely ignore its own judgment and its own conclusions from the evidence submitted to it of what is a fair and reasonable rate, and to adhere to a rate which though fixed by an agreement is obviously not such a rate as would enable the company to properly finance its operations and to render efficient service. We must not overlook the fact that the railways have their obligations to the public at large, and so as to fulfil those obligations they must get a fair and reasonable rate so as to enable them to pay their expenses. The credit of the C.P.R. stands very high in the markets of the world. The status of the securities of that company tend to enhance the credit of the whole Dominion. It is inspiring to know that our railway systems have been uniformly well maintained and that compared with conditions in the United States of Amer-

ica, where since 1916 4,000 miles of railway was abandoned and where it is anticipated that at least 1,000 miles of some of the eastern railway systems will be abandoned this year, we have a lot for which to congratulate ourselves.

In all the discussions which have taken place with respect to reduction of rates, the point made by the committee of the House as to cost of operation seems to have been entirely overlooked, and the suggestion that the management of the railways and their employees should co-operate with that end in view seems to have fallen more or less on deaf ears. It may be that instead of maintaining an attitude of continuous animosity towards the railways and criticism of the different sections of Canada the one against the other, if we would all unite in trying to solve the problem of reducing the cost of operation with a view to having effected a reduction in freight rates, the country would be better served. It is quite obvious that the western farmer must have his commodities shipped at the lowest possible price and must have his produce shipped out of the country at the lowest possible rate. Freight rates, therefore, are a very important factor in the life of the western country. If the country were filled up with a number of new settlers, the problem would not be so acute. It would appear to be a mistake for those who are advocating on the one hand a large influx of immigrants so as to cultivate our land and help to build up the country, to in the same breath complain that all the forces which go to make up the groundwork of our prosperity are operating against the country into which they are inviting the immigrants. We cannot expect to have immigrants come readily into a country holding out such uncertain prospects, and the sooner we cultivate a frame of mind which will make for co-operation instead of disintegration,

the better it will be for the whole country. This advocacy of only one side of the question and of pessimistic grievance-mongering is having its bad effect in the West. This has been disclosed in the fact that at the convention of United Farm Women which met recently in Brandon, there were loud expressions of opinion in favor of the West seceding from the rest of the country. The matter is one which should be very carefully

and earnestly considered by every citizen, and all should co-operate in creating a better understanding so that when the matter is again brought before the Railway Commission, as it will be from time to time, the interested parties will be able to give their evidence in a less partisan spirit and more with a view to jointly solving an obviously difficult problem.



